

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

James E. Bradley,

Petitioner,

vs.

Bloomington Public Schools,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATIONS**

The above-entitled matter came on for hearing before Administrative Law Judge Bruce H. Johnson at 9:30 a.m. on January 7 and 8, 1998, in Room 109, Bloomington Education Center, 8900 Portland Avenue South, Bloomington, Minnesota.

Edwin L. Sisam, Attorney at Law, 6600 France Avenue South, Suite 360, Minneapolis, Minnesota 55435-1804, appeared on behalf of the Petitioner, James E. Bradley (hereinafter "Mr. Bradley"). David L. Holman, Attorney at Law, International Village Office Arcade Building, 220 W. 98th Street, Bloomington, Minnesota 55420, appeared on behalf of the Respondent, Bloomington Public Schools (hereinafter the "School District" or "District"). The record of the proceeding closed on January 26, 1998, upon receipt of the parties' post-hearing briefs.

NOTICE

This Report is a recommendation and not a final decision. After a review of the record, the Commissioner of the Minnesota Department of Veterans Affairs will make the final decision, in which he may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61 (1996), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Bernie Melter, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service

Building, St. Paul, Minnesota 55155-2079, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are:

1. Whether Mr. Bradley was a department head and, therefore, exempt from the provisions of the Veterans Preference Act at the time he was demoted from the position of Director of Support Operations to the position of Facilities Ancillary Services Coordinator on or about September 2, 1997; and

2. If Mr. Bradley was not a department head at the time he was demoted, whether his demotion resulted from a good faith elimination of his position for legitimate reasons or whether it resulted from a bad faith motive directed at him personally and designed to oust him from his position.

Based upon all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mr. Bradley now resides in Bloomington, Minnesota. He previously served in the United States Marine Corps Reserve, with active duty service as a supply officer from January 24, 1973, until September 1, 1975. After completing his inactive reserve duty obligation he was honorably discharged. (Testimony of James Bradley; Exhibit 1)

2. Mr. Bradley obtained his undergraduate degree in teaching industrial technology, along with a teaching certificate, from St. Cloud State University. He subsequently obtained a master's degree in educational administration from Mankato State University. He is certified by the State of Minnesota as a school business official and is a member and director of the Minnesota Association of School Business Officials, a member of the Minnesota Association of Pupil Transportation Supervisors, and a member of the Minnesota Association of School Maintenance Supervisors. (Testimony of James Bradley)

3. Prior to becoming employed by the Bloomington School District, Mr. Bradley had been employed as a teacher in the Lakeville, Minnesota, public schools, and as business manager in the Osseo, Minnesota, public schools. (Testimony of James Bradley)

4. The School District is a political subdivision of the State of Minnesota, located in Hennepin County Minnesota. It is governed by a locally elected board of education (hereinafter "School Board"), which is generally responsible for making policy

through the adoption of resolutions and the promulgation of regulations, for approving the School District's budget, and for appointing its Superintendent, who serves as the School District's chief executive officer. By law, the School Board has the exclusive power to hire, fire, demote, or discipline employees of the School District. (Testimony of Arlene Bush)

5. Mr. Bradley was first hired by the School District in August of 1984 as its Director of Support Operations. In that capacity, he reported to an Assistant Superintendent for a brief period of time until the latter's retirement in late 1984 and thereafter reported directly to the Superintendent. When that Assistant Superintendent retired in late 1984, Mr. Bradley assumed the duties, but not the title, of that position. (Testimony of James Bradley; Exhibits 16 and X)

6. Beginning in late 1984 and continuing thereafter until June 24, 1996, Mr. Bradley reported in his capacity as Director of Support Operations directly to the Superintendent. During that period, the School District considered Mr. Bradley to be a member of its "cabinet" and one of its six department heads. (Testimony of James Petersen and James Bradley; Exhibit X)

7. Beginning in late 1984 and continuing thereafter until some time after June 24, 1996, Mr. Bradley's position as Director of Support Operations included, among others, the following duties and responsibilities: responsibility for providing leadership to, and managing the operations of, all the District's building and grounds, food service, transportation, health and safety, and real estate activities and functions (Testimony of James Petersen and James Bradley; Exhibit X); direct supervision over at least three subordinate activity supervisors and direct or indirect supervision of over 200 employees (Testimony of James Bradley); responsibility for developing and recommending to the School Board support services programs, budgets and cost controls for the activities he was managing (Testimony of James Petersen and James Bradley); responsibility for preparing evaluations of the efficiency and effectiveness of the activities under his control (*id.*); responsibility for training the employees under his overall supervision (*id.*); and direct responsibility for determining the District's capital improvement needs and for recommending and overseeing all of its capital improvement projects (Testimony of James Peterson and Les Fujitake).

8. Beginning in late 1984 and continuing thereafter until some time after June 24, 1996, Mr. Bradley's vision, planning and experience maximized the quality of the School District's physical facilities, and on occasions he was directly responsible for obtaining additional funding from the legislature to improve those physical facilities. His managerial and leadership technique was responsible for numerous successes and improvements within the District. (Testimony of James Bradley and Kent Stever; Exhibits 4 through 9 and 12)

9. By both law and practice, the School Board has reserved ultimate authority to hire, discharge, promote, demote, and discipline all of the District's employees. (Testimony of Arlene Bush) Beginning in late 1984 and continuing

thereafter until some time after June 24, 1996, however, Mr. Bradley screened, interviewed, and made recommendations to the School Board regarding appointments of new personnel and promotions, including appointments of senior supervisors, such as the Director of Food Service. (Testimony of James Bradley; Exhibit W) He also was responsible for taking corrective measures with subordinates to address personnel problems and work deficiencies and for recommending disciplinary actions to the School Board. (Id.)

10. Beginning in late 1984 and continuing thereafter until some time after June 24, 1996, the vast majority of Mr. Bradley's time was devoted to building maintenance and capital improvement issues. (Testimony of James Bradley) The Food Service Director, whom the School Board had hired on his recommendation, was extremely capable and Mr. Bradley left management of food service activities largely to her own initiative. (Id.) The actual transportation of students within the District was performed by an independent contractor and the duties of the Director of Transportation consisted primarily of coordinating those contract services to meet the needs of school buildings and members of the public. After a brief period of orientation when Mr. Engstrom was appointed to that position, Mr. Bradley also left management of the District's transportation activities largely to Mr. Engstrom's own initiative. (Testimony of James Engstrom)

11. All of the evaluations of Mr. Bradley's performance that were made during his employment with the School District indicated that his leadership qualities and the performance of his duties were excellent, and there was no suggestion by the School District that Mr. Bradley has ever been incompetent in the performance of his duties or that he had been guilty of any kind of misconduct. (Testimony of James Petersen and Arlene Bush; Exhibits 5 through 9 and 12 through 15)

12. Beginning in about 1990 and continuing until the present, it has been the School District's policy to implement principles of site-based management — that is, to decentralize decision making as much as possible and to shift authority and responsibility for making decisions to the site councils and administrators of individual school buildings. (Testimony of James Peterson and Arlene Bush; Exhibits A through P) Until the spring of 1995, the District's primary emphasis was on shifting authority and responsibility for instructional services to individual school buildings, and much less emphasis was placed on local authority and responsibility for support services, such as maintenance, capital improvements, food service, etc. (Id.; testimony of Les Fujitake)

13. At some time prior to April of 1995, the School District engaged Mr. Clark M. Kirkpatrick as an independent consultant to perform a management analysis of the functions in the District's central office. (Testimony of James Petersen; Exhibit Q) On April 26, 1995, Mr. Kirkpatrick submitted a report to the School District in which he recommended, among other things, that the central office management organization be simplified by replacing the six department heads then reporting directly to the Superintendent with three assistant superintendents, who would function as department heads. (Testimony of James Petersen, Exhibits Q and W) Among other things, the

report recommended that all three existing support service department head positions -- the Executive Director of Human Resources, the Director of Business/Finance, and the Director of Support Operations — be combined into a single position, which the consultant called “Assistant Superintendent - Operations.” (Id.) Thus, the report recommended elimination of Mr. Bradley’s position and two other department head positions, with the functions of those three positions being reallocated, in part, to a new single department head and, in part, to the administrators and site councils at individual school buildings. (Testimony of James Petersen; Exhibit Q) The consultant contemplated that the recommended changes would not necessarily occur all at once but might occur over time. (Id.)

14. Besides simplifying the Superintendent’s reporting relationships, Mr. Kirkpatrick expressed his opinion that the organizational changes would promote the expansion of site-based management of support services, which Mr. Kirkpatrick indicated was being impeded by the existing central office organization:

There are several significant drivers that have surfaced in the review process which are addressed by the recommendation.

* * *

- Site based management is creating tension in terms of how best to provide services and which ones to sites. Personnel, as well as finance issues, cuts across all the various functional departments and are increasingly becoming more in need of coordination. (Id. at 3)

15. About a month later, Ed Quigley, another consultant to the District on site-based management, made the following observation about the movement toward site-based management within the District in a memorandum to the District Resource Committee (Exhibit S):

2. The District Resource Committee and the district leadership together might begin to address the perception that the district is functioning under two different decision making models—a shared decision making model at the site level, and a more traditional decision making model at the district level.

16. Sometime in 1995 after May 1st of that year, the School Board appointed Les Fujitake as its Director of Business/Finance, replacing Margaret Jadin, who had submitted her resignation in about April of 1995. (Testimony of James Petersen, Les Fujitake, and James Bradley; Exhibit Q) Sometime prior to October 18, 1995, the School District established the new position of Executive Director of Finance and Support Services, which the School District intended to correspond approximately to the Assistant Superintendent position described in Finding No. 12, above, and it appointed Mr. Fujitake to that position. In that new capacity, Mr. Fujitake reported directly to the Superintendent. (Id.; Exhibit 9)

17. On or about October 18, 1995, Superintendent Connors met with Mr. Bradley for the purpose of discussing the latter's annual performance evaluation. (Exhibit 9) That discussion included the following:

Mr. Bradley has raised several issues regarding my suggestion to reorganize support services. Two of the areas that have been suggested to come under the jurisdiction of the Director of Finance and Support Services are Transportation and Food Service. Mr. Bradley sees some justification for moving Food Service but has reservations about moving transportation. Mr. Bradley has been informed that neither of these areas will be reassigned until they are reviewed by the Finance Director, Mr. Bradley, others and myself. This review will not take place until after January of 1996. The bottom line is that we will reorganize if we can show that it will result in better service to our customers and is cost effective.

(Id.) It is uncertain when, if at all, the review described by Superintendent Connors ever occurred.

18. Some time after Mr. Fujitake became Executive Director of Finance and Support Services but before June 24, 1996, the central office position of Executive Director of Human Resources was eliminated when the incumbent retired. In its place, the lower level position of Director of Human Resources was established at a lower salary. Ken Johnson was appointed to that new position. In that capacity, Mr. Johnson reported directly to Mr. Fujitake. (Testimony of James Petersen, Exhibit 11)

19. On June 24, 1996, the School Board approved a change to Mr. Bradley's position description as Director of Support Operations. The only significant change from his previous position description was that he would no longer be reporting directly to the Superintendent but rather would be reporting thereafter to Mr. Fujitake in his capacity of Executive Director of Finance and Support Services. (Testimony of James Petersen and James Bradley; Exhibits W and Y) At that time, however, the School Board left uncertain whether the building and grounds, food service, and transportation departments would each thereafter be reporting directly to Mr. Fujitake or would continue to report directly to Mr. Bradley. (Testimony of Mr. Bradley; Exhibit Y) Also at that meeting, the School Board eliminated three central office positions — Coordinator of Instructional Services, Director of Vocational Education, and Health and Safety Specialist — at an annual saving of about \$238,000. (Exhibit T)

20. Between June 24, 1996, and August 11, 1997, Mr. Bradley and Mr. Fujitake met with each other on only about five or six occasions. (Testimony of James Bradley and Sharon Holland) During the course of the same time period the supervisors in the District's building & grounds, food service & transportation departments gradually ceased reporting directly to Mr. Bradley and began reporting directly to Mr. Fujitake. (Testimony of James Bradley and James Engstrom) By August 11, 1997, Mr. Fujitake was exercising direct supervision and control over those three

departments, and the success of those activities had become dependent on Mr. Fujitake's, and not Mr. Bradley's, management and leadership techniques. (Id.) By August 11, 1997, no district employees, other than Mr. Bradley's secretary, were reporting directly to him, and his duties consisted exclusively of matters relating to health and safety, security, energy management, and CADATA. (Testimony of James Bradley and Sharon Holland)

21. On the evening June 19, 1997, Superintendent Connors called Mr. Bradley and informed him that he would be recommending to the School Board that Mr. Bradley's position as Director of Support Operations be eliminated and that Mr. Bradley be reassigned to another position with responsibility for health and safety, security, energy management, and CADATA. Superintendent Connors indicated to Mr. Bradley that his financial status would not change "for the time being." (Testimony of James Bradley) Shortly thereafter, Superintendent Connors left the Bloomington School District for a superintendency in a school district in Connecticut. (Id.)

22. On August 11, 1997, the School Board voted to amend the School District's organizational structure by eliminating the position of Director of Support Operations and reassigning the incumbent to the new position of Facilities Ancillary Services Coordinator with responsibility for health and safety, security, energy management, and CADATA. (Exhibit Z)

23. On September 2, 1997, Ken Johnson, the District's Director of Human Resources, sent a letter to Mr. Bradley informing him of the School Board's actions on August 11, 1997, and that Mr. Bradley's new position had been classified as having a lower salary range than his former position as Director of Support Operations. Mr. Johnson also indicated that Mr. Bradley would continue to be compensated at his previous salary level through June 30, 1998. (Exhibit 11) These actions involve a salary reduction for Mr. Bradley from \$67,000 to \$51,279, exclusive of tax deferred annuity benefits. (Testimony of James Bradley)

24. During the period from April of 1995 to August of 1997, the administrators and site councils at some of the District's individual school buildings began requesting that the District's site-based management program include decentralization of, and greater local authority over, many support services, including budgets, maintenance and food service staffing levels, personnel decisions, and capital improvements. One concern was the confusion caused by using a shared decision model for making instructional decisions and using a more conventional, centralized decision making process for making support service decisions. (Testimony of James Petersen, Les Fujitake, and Ed Donahue; Exhibits Q and S)

25. As a result of the reorganization process that occurred between April of 1995 and August of 1997, three positions that reported directly to the Superintendent were eliminated, namely the Director of Business/Finance, the Executive Director of Human Resources, and the Director of Support Operations, which was Mr. Bradley's former position. The management responsibilities and authority of those three positions

were reallocated, in part, to the Executive Director of Finance and Support Services and, in part, to the administrators and site councils at individual school buildings as part of an effort by the School District to decentralize support service decision making and expand the concept of site-based management. (Testimony of James Petersen, Les Fujitake, and Ed Donahue; Exhibit U)

26. After completion of the reorganization described in Finding No. 24, above, individual school buildings have, in fact, had greater authority and a larger role in making support service decisions that affect them. For example, school buildings now have greater freedom and authority than they did prior to July of 1996: to make recommendations about personnel matters; to determine staffing levels for support services; to become involved in building and grounds decisions; to make physical facility changes in support of curricular changes; to have more control over capital improvement funds; and to make changes in transportation and food services in response to local building needs. (Testimony of James Peterson, Les Fujitake, and Ed Donahue)

27. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

28. Any Finding more properly termed a Conclusion is hereby adopted as such.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Under Minn. Stat. § 14.50 and § 197.481 (1996), the Commissioner of Veterans Affairs and the Administrative Law Judge have authority to consider the issues raised under the Veterans Preference Act, Minn. Stat. § 197.46 (1996) in this proceeding.

2. The Notice of Petition and Order for Hearing was proper in all respects, and the Department of Veterans Affairs has complied with all relevant, substantive and procedural requirements of statute and rule.

3. The School District received timely and proper notice of the hearing herein.

4. Mr. Bradley is an honorably discharged "veteran" within the meaning of Minn. Stat. § 197.447 (1996) and § 197.46 (1996) and is entitled to all of the protections and benefits afforded by the Veterans Preference Act, Minn. Stat. §§ 197.46, et seq. (1996).

5. The School District is a political subdivision of the state within the meaning of Minn. Stat. § 197.46 (1996), and its personnel practices are therefore subject to the provisions of the Minnesota Veterans Preference Act, Minn. Stat. §§ 197.46, et seq. (1996).

6. The Minnesota Veterans Preference Act, Minn. Stat. §§ 197.46 (1996) exempts "department heads" from the requirement that a veteran be given notice of a right to a hearing to establish incompetency or misconduct prior to termination of his or her employment. State ex rel. McGinnis v. Police Service Commission of Golden Valley, 91 N.W.2d 154, 161 at n. 10 (Minn. 1958); State ex rel. McOske v. City Council, 208 N.W. 1005 (Minn. 1926). The School District has the burden of establishing that at the time of his demotion, Mr. Bradley was a department head, who was exempt from the requirements of the Veteran's Preference Act. Holmes v. Wabasha County, 402 N.W. 643 (Minn. App. 1987).

7. Beginning in late 1984 and continuing for more than a decade thereafter, Mr. Bradley, in his position as the School District's Director of Support Operations, was a "department head" for purposes of Minn. Stat. § 197.46 (1996), and during that period the School District was exempt from the requirements of that statute with respect to any adverse personnel actions directed at Mr. Bradley.

8. By August of 1997, when the School Board took action to eliminate Mr. Bradley's position as Director of Support Operations, that position was no longer a "department head" position and, as the incumbent, Mr. Bradley was no longer a "department head" for purposes of Minn. Stat. § 197.46 (1996). The School District was, therefore, no longer exempt from the requirements of the Veterans Preference Act with respect to adverse personnel actions directed at Mr. Bradley.

9. The requirement of the Veterans Preference Act, Minn. Stat. §§ 197.46 (1996), that a veteran is entitled to a hearing on whether cause existed for his or her dismissal or demotion normally does not apply when a public body eliminates a position in good faith for some legitimate purpose, such as when it is part of a good faith reorganization. State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (Minn. 1923), Young v. City of Duluth, 386 N.W.2d 732, 737 (Minn. 1986).

10. Whether a veteran's position has been eliminated in good faith for a legitimate purpose is an affirmative defense for which a public employer of the veteran has the burden of proof. State ex rel. Caffrey v. Metropolitan Airport Commission, 246 N.W.2d 637 (Minn. 1976); cf. Southern Minnesota Municipal Power Agency v. Schrader, 394 N.W.2d 796, 802 (Minn. 1986).

11. The decision of the School Board on August 11, 1997, to eliminate the position of Director of Support Operations, resulting in Mr. Bradley's demotion to the position of Facilities Ancillary Services Coordinator on September 2, 1997, was made in good faith for legitimate purposes.

12. The School District has not denied Mr. Pierce rights provided to him by Minn. Stat. § 197.46 (1996).

13. These Conclusions are made for the reasons set out in the Memorandum which is attached to and incorporated by reference in these Conclusions.

14. Any Conclusion more properly termed a Finding is hereby adopted as such.

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS THE RECOMMENDATION of the Administrative Law Judge that the Petition of James E. Bradley be DISMISSED.

Dated this _____ day of February 1998.

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (seven tapes); No Transcript Prepared.

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NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (1996), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

This proceeding was initiated by a Notice of and Order for Hearing dated November 17, 1997, issued by the Commissioner of Veterans Affairs pursuant to his authority under Minn. Stat. § 197.481 (1996). The Notice scheduled the hearing in this matter for 9:30 a.m. on December 23, 1997. For good cause, the hearing was continued until January 7, 1998. The purpose of the hearing was to hear Mr. Bradley's petition for relief under the Minnesota Veterans Preference Act, Minn. Stat. §§ 197.46, et seq. Specifically, Mr. Bradley alleges that the School District's decision on August 11, 1997, to demote him from the position of Director of Support Operations to the position of Facilities Ancillary Services Coordinator was not made as the result of a good faith reorganization and that he is entitled to a hearing on the issue of whether the School District acted in good faith as indicated in the Minnesota Supreme Court's decision in Young v. City of Duluth, 386 N.W.2d 732, 740 (Minn. 1986). The School District contends that on August 11, 1997, Mr. Bradley was serving as a "department head" and was therefore exempt from the provisions of the Veterans Preference Act. Alternatively, the School District contends that even if Mr. Bradley is found not to have been a department head at the time in question, his demotion did occur as the result of a good faith reorganization of the District's central office operations.

Minn. Stat. § 197.46 (1996) provides in pertinent part:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.^[1]

Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge.

The parties do not dispute that Mr. Bradley is an honorably discharged veteran who is entitled to the protections of the Veterans Preference Act to the extent that they may be applicable. Neither is there any genuine dispute over several other material facts: The position of Director of Support Operations, in which Mr. Bradley was serving, was eliminated as the result of School Board action on August 11, 1997, and he was thereafter demoted from that position to the position of Facilities Ancillary Services Coordinator by letter dated September 2, 1997. (Exhibits Z and V) His demotion involves a reduction in salary from \$67,000 to \$51,279.^[2] The letter notifying him of his demotion advised him of his right under the Veterans Preference Act to request a hearing to establish whether he was being removed from his position for incompetency or misconduct. (Exhibit V) Although Mr. Bradley did not request a hearing on those

issues, the School District concedes that his demotion was not performance-related. What therefore remains to be determined is whether Mr. Bradley was a department head at the time that demotion occurred and, if not, whether his demotion resulted from a reorganization which involved a good faith elimination of his position for legitimate reasons or whether it resulted from a bad faith motive directed at him personally and was designed simply to oust him from his position.

**I. Mr. Bradley Was Not a Department Head Exempt from
the Veterans Preference Act on either August 11 or September 2, 1997**

Although Minn. Stat. § 197.46 (1996) requires a public body to give notice of its intent to terminate the public employment of, or demote, an honorably discharged veteran and to establish cause for such an adverse personnel action upon the veteran's request, the statute goes on to provide for the following exemptions:

Nothing in section 197.455 or this section shall be construed to apply to the position of private secretary, teacher, superintendent of schools, or one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer.^[3]
[Emphasis supplied.]

The initial question here is whether Mr. Bradley was employed in the capacity of a head of a department. Mr. Bradley concedes that there was a time when he served as one of the School District's department heads, but he contends that his position lost that status on or about July 1, 1996, so that when the School Board eliminated his position on August 11, 1997, resulting in his demotion, he was no longer a department head and, therefore, no longer exempt from the Act. The School District, on the other hand, argues that Mr. Bradley continued to be a department head until his position was eliminated in August of 1997, that he was demoted from that department head position, and that he is therefore not entitled to the protections of the Veterans Preference Act.

In State ex rel. McGinnis v. Police Service Commission of Golden Valley, 91 N.W.2d 154, 163 (Minn. 1958), the Minnesota Supreme Court discussed eight factors that it did consider to be important in determining whether a veteran is a department head and, therefore, exempt from the Act:

- (1) Does the alleged department head have charge of the work done by his department?
- (2) Does his work require technical, professional training?
- (3) Is he the highest authority at that level of government as to his official duties?
- (4) Does he supervise all of the work in his department?

- (5) Does the success of his department depend on his technique?
- (6) Are the employees in the department under his direction?
- (7) Are his duties more than merely different from other employees?
- (8) Does he have power to hire and fire subordinates?

There are some common threads that can be found in most of these factors. The inquiry should be directed at the extent to which the activities over which Mr. Bradley had control represented essential School District functions, the extent of Mr. Bradley's authority to exercise discretion in managing the activities of his portion of the organization, and whence Mr. Bradley drew his authority to exercise discretion. Nothing in McGinnis suggests that all eight factors need to be present in order for a school district employee to be considered a department head. They are merely guides for assessing an employee's importance to a school district, the extent and scope of his or her legal authority, and his or her ability to exercise discretion in carrying out duties.

Beginning shortly after he was hired by the School District in 1984, Mr. Bradley assumed duties that had been formerly carried out by an Assistant Superintendent. He reported directly to the Superintendent, who was the District's chief executive, and he was identified as one of six "department heads." (Testimony of James Petersen and James Bradley; Exhibit X) When the McGinnis factors are applied to the facts, Mr. Bradley clearly served as a department head, within the meaning of Minn. Stat. § 197.46 (1996), from late 1984 until at least the summer of 1996. In fact, Mr. Bradley concedes that he was an exempt department head during that period of time. The inquiry must next turn to whether he remained a department head until September of 1997.

In May of 1995, a management consultant engaged by the School District recommended that its central management organization be simplified by replacing the six department heads then reporting directly to the Superintendent with three assistant superintendents, or department heads. (Testimony of James Petersen, Exhibits Q and W) More specifically, the report recommended that three existing support service department head positions — the Executive Director of Human Resources, the Director of Business/Finance and the Director of Support Operations — all be combined into a single position, which the consultant called "Assistant Superintendent - Operations." (Id.) In other words, the report recommended elimination of Mr. Bradley's position and two other department head positions and reallocation of the functions of those positions, in part, to a new single department head and, in part, to the administrators and site councils at individual school buildings. (Testimony of James Petersen; Exhibit Q) The consultant contemplated that the recommended changes would not necessarily occur all at once but might occur over time.

Of the activities under Mr. Bradley's jurisdiction in 1995, the building and grounds function consumed the vast majority of his time and attention. (Testimony of James Bradley) The Food Service Director was extremely capable, and that part of Mr. Bradley's directorship essentially "ran itself." (Id.) Actual student transportation was provided by a contractor and primarily required coordination. After a period of orientation, Mr. Bradley left supervision of that department largely to Mr. Engstrom. (Testimony of James Engstrom)

In about April of 1995, the District's Director of Business/Finance announced her resignation. (Exhibit Q) She was replaced later that year by Mr. Fujitake. (Testimony of Les Fujitake and James Bradley) At some time prior to June of 1996, the District created the position of Executive Director of Finance and Support Services, which corresponded to the Assistant Superintendent - Operations position recommended by the District's consultant. (Testimony of James Petersen) Mr. Fujitake was appointed to that position, and his former department head position as Director of Finance was eliminated. Also, at some time in 1995 or 1996, the Executive Director of Human Resources department head position was eliminated when the incumbent retired, and Mr. Fujitake also assumed many of those functions in his capacity as Executive Director of Finance and Support Services. (Testimony of James Peterson)

In October of 1995, Timothy Connors, who was then Superintendent, discussed with Mr. Bradley the idea of reassigning the Transportation and Food Service Departments from Mr. Bradley's jurisdiction to Mr. Fujitake's. (Exhibit 9) Mr. Bradley disagreed with the idea, and further discussion and a decision was left until after January of 1996. (Id.) On June 24, 1996, the School Board revised Mr. Bradley's position description. The only material change that the Board appears to have made from his previous job description was that he was to report directly to Executive Director of Finance and Support Services rather than to the Superintendent. (Exhibit W) This change alone has some consequences under McGinnis, supra, since Mr. Bradley was no longer the highest authority in the School District as to his official duties. In other words, at least on paper, the position of Executive Director of Finance and Support Services appears to have superseded Mr. Bradley's position as the department head position for the activities nominally in Mr. Bradley's jurisdiction.

Although the reporting relationships may have changed, the duties described for the Director of Support Operations in the new job description still appear to be functionally characteristic of a department head. It is primarily on this fact that the School District relies in contending that Mr. Bradley did not cease being a department head until September of 1997. But the Minnesota Supreme Court has repeatedly emphasized that in considering claims under the Veterans Preference the substance of the underlying transactions, and not merely the form, should govern the outcome. See, e.g., Myers v. City of Oakdale, 409 N.W.2d 848, 850 (Minn. 1987) The inquiry therefore turns to whether any of the other McGinnis factors changed after June 24, 1996. Mr. Bradley and Mr. Engstrom both testified that in a gradual process that started occurring after July 1, 1996, the supervisors who had formerly reported directly to Mr. Bradley began by-passing him and reporting directly to Mr. Fujitake. Mr. Bradley's secretary,

Ms. Holland, testified that the duties that Mr. Bradley has been performing during the last year and a half have related almost exclusively to health and safety, energy, and CADATA matters. Mr. Fujitake did not directly contradict any of this testimony. Rather the School District argues that Mr. Bradley's subordinates "circumvented" his authority during a "transition period." Even if this characterization were accurate, the District clearly did nothing to discourage or prevent this circumvention, since its stated plan from May of 1995 had been to eliminate Mr. Bradley's position and distribute its functions, in part, to Mr. Fujitake's new position and, in part, to individual building administrators and site committees.^[4] In terms of substance, by August of 1997, the success of the activities nominally under Mr. Bradley's jurisdiction depended primarily on Mr. Fujitake's, and not Mr. Bradley's, managerial and leadership technique. Moreover, as a practical matter, Mr. Bradley no longer had charge of most of the work nominally under his control nor did he have effective supervision of the employees performing that work. In summary, regardless of what may have appeared on paper, the evidence established that by August of 1997 Mr. Bradley's position had been so eviscerated of its department head functions, many of which, in turn, had been assumed by Mr. Fujitake, that the former could no longer be considered a "department head" for purposes of the Veterans Preference Act, and Mr. Bradley was no longer exempt from the protections afforded by the Act.

II. Mr. Bradley's Position Was Eliminated in Good Faith as Part of a Legitimate Plan of Reorganization

Having concluded that the School District's plan to eliminate Mr. Bradley's department head position was functionally consummated before he was actually demoted to Facilities Ancillary Services Coordinator, there remains to be considered whether that action was taken by the School Board in good faith as part of a legitimate plan of reorganization or whether it was driven by a bad faith motive to oust Mr. Bradley, as an individual, from the position.

On its face Minn. Stat. § 197.46 (1996) appears to apply to any action by a public body to terminate the public employment of an honorably discharged veteran, regardless of whether or not the termination is part of a bona fide reorganization. However, beginning with State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (Minn. 1923), the Minnesota Supreme Court has established a line of authority indicating that the Veterans Preference Act does not prevent public employers from eliminating positions, and incidentally the employment of veterans who may occupy them, so long as those positions are being eliminated in good faith for legitimate purposes:

The purpose of this section [the Veterans Preference Act] is to take away from the appointing officials the arbitrary power, ordinarily possessed, to remove such appointees at pleasure; and to restrict their power of removal to the making of removals for cause. But it is well settled that statutes forbidding municipal officials from removing appointees except for cause

are not intended to take away the power given such officials over the administrative and business affairs of the municipality, and do not prevent them from terminating the employment of an appointee by abolishing the office or position which he held, if the action abolishing it be taken in good faith for some legitimate purpose, and is not a mere subterfuge to oust him from his position. [Citations omitted.] The municipal authorities may abolish the position held by an honorably discharged soldier and thereby terminate his employment, notwithstanding the so-called veteran's preference act. *Id.* at 32.^[5]

An assertion by the public body that a veteran's position has been eliminated as the result of a good faith reorganization is an affirmative defense for which the public body has the burden of proof. See, e.g., State ex rel. Caffrey v. Metropolitan Airport Commission, 246 N.W.2d 637 (Minn. 1976); cf. Southern Minnesota Municipal Power Agency v. Schrader, 394 N.W.2d 796, 802 (Minn. 1986).^[6] Moreover, in determining whether a position has been eliminated in good faith, a reviewing tribunal is obliged to examine the substance of the action and not just the form. Myers v. City of Oakdale, 409 N.W.2d 848, 850 (Minn. 1987). Whether action to eliminate the position has been taken in good faith or whether the reasons given by the public body are merely a subterfuge to oust the veteran from his position is a question of fact to be determined by the trier of fact by a preponderance of the evidence. Caffrey, supra, 246 N.W.2d at 641; State ex rel. Niemi v. Thomas, 27 N.W.2d 155, 157, 223 Minn. 435, 438 (Minn. 1947).

The initial recommendation to eliminate the position of Director of Support Operations, as well as the positions of Executive Director of Human Resource and Director of Business/Finance, and replace them with a single department head position was made on April 26, 1995, by an independent consultant engaged by the School District to perform a management study. (Exhibit Q) In his report, the consultant stated that his report was "not a review of specific people; not an evaluation of personnel in any manner." (*Id.* at 2) And no evidence was adduced even suggesting that the consultant harbored, or was infected by, any feelings of personal animosity toward Mr. Bradley.^[7] In any event, Mr. Connors, who was then Superintendent, circulated the consultant's report widely among School District staff to elicit comments.^[8] (*Id.*) The consultant suggested that the recommended changes would not necessarily occur all at once but might occur over time. (*Id.*) In fact, the elimination of the three department head positions did occur in stages. The first to be eliminated appears to have been the position of Director of Business/Finance. Many of its functions were assimilated by the position of Executive Director of Finance and Support Services when Mr. Fujitake moved from the former to the latter position.^[9] The second to be eliminated was the Executive Director of Human Resources when the incumbent retired. The functions of that position were distributed among Mr. Fujitake in his new position, a lower level human resource professional, and the administrators and site committees at individual buildings. (Testimony of James Peterson and Les Fujitake) The last to be eliminated was Mr. Bradley's position.^[10]

The School District relies primarily on three reasons to justify the reorganization that resulted in Mr. Bradley's demotion — a "flattening" of the central office management structure, some cost savings, and expansion of the District's movement toward site-based management to include support activities. (Testimony of James Petersen)

A. "Flattening" the Organization

Both Mr. Petersen and Mr. Fugitake testified that a reason for the reorganization was to "flatten" the management structure of the District's central office. Mr. Bradley argues that the management structure has not been flattened, being made up of three levels of management both before and after the reorganization. But Mr. Bradley's argument exalts form over substance and plays upon what appears to have been misuse of the term "flatten." The clear intent of the consultant's recommendation of April 26, 1995, was to simplify central office management by having only three department heads report to the Superintendent instead of the six who were reporting then. (Exhibit Q) Although the plan ultimately adopted by the School Board did not simplify the central office organization that much, it did reduce the number of department heads reporting to the Superintendent from six to four. The Administrative Law Judge concludes that simplifying central office organization by reducing the number of department heads reporting directly to the Superintendent, and thereby reducing his or her required span of control, was a legitimate reason for the reorganization that resulted in elimination of Mr. Bradley's former position.

B. Cost Savings

Mr. Bradley also appears to suggest that Caffrey, *supra*, establishes a special test under which a showing by a veteran that eliminating his or her position (1) effects no significant economic savings and (2) effects no substantial change in the departmental operations establishes bad faith per se on the part of the public body. In such circumstances, Mr. Bradley suggests that evidence of a lack of significant cost savings is sufficient to support a finding of bad faith, and that no other evidence of an improper primary motive to get rid of the veteran rather than the position is then required. In Caffrey, however, the Supreme Court neither held nor implied that such evidence alone would be sufficient to sustain a finding of bad faith, much less sufficient to establish bad faith per se.^[11] Caffrey and Taylor merely stand for the proposition that a trier of fact may consider evidence that eliminating a position failed to effect savings or a substantial change of operations as some evidence of bad faith, to be considered together with other evidence. In short, there is nothing in Caffrey and Taylor to suggest a change in the test that was fashioned in Boyd — that is, whether the public body's real motive was terminating the employment of a particular incumbent in a position rather than simply eliminating the position itself.

In any event, Mr. Bradley argues here that the \$15,700 in annual savings that the District will realize from his demotion is so insignificant in the context of a \$92 million District-wide budget and an \$11 million support services budget that it at least represents some evidence of bad faith. But in addition to the savings attributable to Mr. Bradley's demotion, the School District presented evidence that elimination of the position of Executive Director of Human Resources and replacing it with a lower level and lower paid position also yielded some savings. (Testimony of James Petersen) It also presented evidence that other changes in the central office management structure produced around \$238,000 in savings. What is relevant is what savings the reorganization in its entirety produced and not what each individual personnel action within the reorganization produced.^[12] The Administrative Law Judge concludes that the savings produced by the reorganization which, among other things, resulted in the elimination of Mr. Bradley's position are not so insignificant as to represent some evidence of bad faith.

C. Site Based Management

The School District also contends that the reorganization in question was also legitimately driven, in part, by the District's movement toward site-based management. Mr. Bradley denies that this was the case. He first argues that a specific linkage with site-based management must be made with the action on September 2, 1997, to demote him from the eviscerated position of Director of Support Operations to the position of Facilities Ancillary Services Coordinator, a personnel action that did not involve any substantial functional change in his duties. Just as the Administrative Law Judge rejected form in favor of substance in concluding that Mr. Bradley effectively ceased to be a department head prior to August of 1997, so does he reject the invitation to focus microscopically on a single instant in time of an ongoing reorganization process in determining whether Mr. Bradley's demotion was effectively driven by site-based management.

In the early years of the School District's movement toward site-based management, emphasis was almost exclusively on instructional services, and decentralization of support services was largely overlooked. (Testimony of James Petersen, Arlene Bush, and Les Fujitake; Exhibits A, B, E, F, G, and I through P) It appears that the District's attention started becoming more focused on site-based management of support services when the District's consultant, Mr. Kirkpatrick, first recommended a central office reorganization that involved elimination of Mr. Bradley's position. (Exhibit Q) One of the reasons he gave for making the change was:

There are several significant drivers that have surfaced in the review process which are addressed by the recommendation.

* * *

- Site based management is creating tension in terms of how best to provide services and which ones to sites. Personnel, as well as

finance issues, cuts across all the various functional departments and are increasingly becoming more in need of coordination.

(*Id.* at 3) Only a little over a month later, another consultant made the following observation about the movement toward site-based management within the District:

2. The District Resource Committee and the district leadership together might begin to address the perception that the district is functioning under two different decision making models—a shared decision making model at the site level, and a more traditional decision making model at the district level.

The testimony of Messrs. Petersen and Fujitake and Ms. Bush clarified what these two consultants were pointing out. Individual school buildings had become accustomed to making many instructional decisions locally and were pressing for decentralization of many support services and the authority also to make many of those decisions locally. Particularly, there was a perception by many that capital improvement decisions and decisions about maintenance and food service staffing levels were not being driven as much as they should and could have been by principles of site-based management.^[13] (Testimony of Arlene Bush and Ed Donahue) The reasoning behind elimination of the three department head positions was that many of the management functions relating to personnel matters, budgeting, and support services would be redistributed to sites, greatly reducing the time that central office managers would have to spend on such matters. (Testimony of Les Fujitake and Ed Donahue) In Mr. Bradley's case, the vast majority of his time as a department head was consumed with matters relating to building maintenance and capital improvements. (Testimony of James Bradley) Today progressively more of those particular management decisions are being made locally at the site, significantly reducing the amount of time that the appropriate central office department head, now Mr. Fujitake, needs to spend on them, and the concept of site-based management has therefore been expanded within the School District.^[14] (Testimony of Les Fujitake and Ed Donahue) Against this backdrop, the Administrative Law Judge concludes that the District's reorganization plan for its central office, which included elimination both of Mr. Bradley's status as a department head and of his position as Director of Support Operations, was driven by the District's movement toward greater site-based management.^[15]

III. The Evidence Failed to Establish a Bad Faith Motive to Eliminate Mr. Bradley Rather Than His Position

During the course of the hearing, Mr. Bradley did elicit some evidence that he contends is suggestive of an intent to oust him personally from his position rather than eliminate his position for legitimate reasons. First, there was testimony from Mr. Larson, the Chief Custodian at Southwood Elementary School, that shortly after Mr. Fujitake's arrival he had a conversation in which Mr. Fujitake asked for information about several people associated with the Building and Grounds Division in the School District's central

office, including Mr. Bradley. Mr. Larson testified that Mr. Fujitake did not refer to Mr. Bradley in a light that was different from his references to the other individuals, but that it was Mr. Larson's subjective impression that Mr. Fujitake was looking for negative information about all of the persons he named. (Testimony of Jack Larson) Later during their conversation, Mr. Larson recalled Mr. Fujitake making a comment to the effect that he was going to "get the club out," which Mr. Larson interpreted as meaning that Mr. Fujitake intended to "clean house." Even taking this testimony at face value, it is equivocal, at best. The fact that no adverse personnel actions were taken against any of the other individuals Mr. Fujitake named tends to negate the inference that Mr. Fujitake's comments imply a motive on his part to oust Mr. Bradley from his position for personal reasons.^[16]

More important, however, there is no evidence in the record indicating that Mr. Fujitake had any role in the decision to eliminate Mr. Bradley's department head position and demote him or that Mr. Fujitake in some way may have infected the individuals who were involved in making that decision with any feelings of personal animosity toward Mr. Bradley.^[17] In fact, the evidence in the record negates such a suggestion. By law and in fact, the decision first to subordinate Mr. Bradley's position to Mr. Fujitake's and second to demote Mr. Bradley to a less responsible position was the School Board's. There was no evidence in the record that any member of the School Board harbored feelings of ill will against Mr. Bradley or was seeking to dispose of him rather than his position. To the contrary, the testimony of Ms. Bush, who has been Chair of the School Board throughout the events in question, suggested that she had very high regard for Mr. Bradley and for the contributions he had made to the School District, and that she was personally sorry that the policy decisions the Board had made had ended up affecting Mr. Bradley adversely. (Testimony of Arlene Bush; Exhibit 13) Moreover, the actions taken by the Board were upon recommendation of the Superintendent, who through most of the period in question was Mr. Connors. As early as October of 1995, Mr. Connors began discussing with Mr. Bradley the possibility that the latter's position might be downgraded for reasons of policy while, at the same time, praising Mr. Bradley's leadership qualities and performance. (Exhibit 9) The evidence indicates that even though Mr. Connors concluded that the downgrading and elimination of Mr. Bradley's position was in the best interests of the School District, he continued to have a very high personal regard for Mr. Bradley and his abilities right up to the time when Mr. Connors left the School District for another position. (Exhibits 10 and 15)

In conclusion, the evidence cited by Mr. Bradley that the real motive harbored by the decision makers for eliminating his position and demoting him was to get rid of him as a disfavored employee was tenuous and unpersuasive. On the other hand, the School District met its burden of proving by a preponderance of the evidence that the elimination of the position and Mr. Bradley's subsequent demotion occurred as part of a bona fide reorganization that was grounded in legitimate policy considerations, and that it was not a subterfuge or pretext designed to conceal the more specific and personal objective of downgrading Mr. Bradley's employment with the School District.

B. H. J.

^[1] For purposes of the Veterans Preference Act, the term “remove” is considered to embrace a situation where a public body eliminates a position and demotes an incumbent veteran to a lower paying position rather than discharging him or her. Leininger v. City of Bloomington, 299 N.W.2d 723 (Minn. 1980).

^[2] The fact that the reduction in Mr. Bradley's salary was postponed until July 1, 1998, does not alter the substance of what happened.

^[3] Although the statute only appears to cover the chief deputy of the head of a department, the Minnesota Supreme Court has held that “inasmuch as the act excluded a first deputy of the head of a department it must follow that it also excludes the head of a department.” State ex rel. McGinnis v. Police Service Commission of Golden Valley, 91 N.W.2d 154, 161 at n. 10 (Minn. 1958), citing State ex rel. McOsker v. City Council, 208 N.W. 1005 (Minn. 1926).

^[4] That this was the School District's intention is directly evidenced by Exhibit Y, an organization chart which shows Mr. Bradley's position having been merged into Mr. Fujitake's. That document was submitted for the School Board's review on June 24, 1996.

^[5] See also, Young v. City of Duluth, 386 N.W.2d 732, 737 (Minn. 1986).

^[6] In order to establish the affirmative defense of a good faith elimination of the position, the public body clearly has the burden of producing evidence that it has been done for legitimate purposes, but this does not mean, as Mr. Bradley seems to suggest, that the School District is required to prove the absence of bad faith if the veteran simply alleges that the District's reasons were pretextual. If, as here, the veteran contends that the claimed reorganization was merely a pretext for personnel actions that were actually directed toward him personally and not toward the functions of his position, the veteran is obliged to produce evidence of pretext, and the administrative law judge must then determine whether the preponderance of the evidence establishes good faith reorganization or pretext.

^[7] The only evidence even suggesting possible personal ill will toward Mr. Bradley on anybody's part were suggestions by only one witness, Mr. Larson, that Mr. Fujitake may have harbored such feelings. But Mr. Fujitake had not even been hired by the School District when Mr. Kirkpatrick, the consultant, made his recommendations.

^[8] It can be inferred that Mr. Bradley was a recipient of the report because he and Mr. Connors discussed some of the recommendations on October 18, 1995, during the course of the Superintendent's annual appraisal of Mr. Bradley's performance. (Exhibit 9)

^[9] Mr. Donahue testified that some of the budgeting functions formerly performed by that position have been decentralized to local building administrators and site committees.

^[10] Mr. Bradley has argued that bad faith can be inferred from the fact that, among the three incumbents in the eliminated department head positions, he alone has suffered financially. However, the facts also support the inference that the District was simply taking advantage of a resignation, a retirement, and a promotion to minimize the amount of disruption the reorganization would cause to affected staff. The fact that the District will have kept Mr. Bradley at his old salary for nearly two years after he functionally ceased to be a department head suggests solicitude for his interests and not bad faith.

^[11] The precise issue before the Court in Caffrey, supra, was whether the district court's finding that the public body had not acted in good faith in abolishing the veteran's position was “clearly erroneous.” The Supreme Court merely cited the absence of significant savings and absence of any substantial changes in departmental operations as two of several factors that contributed to its holding that “while a finding of lack of good faith is certainly not compelled, neither is such a finding manifestly contrary to the evidence.” 246 N.W.2d at 641. In Caffrey, in addition to lack of significant savings and absence of a change of operations, the district court had also found that elimination of the public body's public affairs officer position was not accompanied by “any specific alternative for meeting public affairs needs.” Id. at 638.

More important, perhaps, the district court had found that management had, in fact, been dissatisfied with the veteran's performance but the veteran "was never informed that his competence was being questioned." *Id.* at 641. The Supreme Court, in effect, held that all of this evidence taken together was sufficient to support a finding that the public body merely used elimination of the position as a pretext for its real motive of attempting to terminate the employment of the veteran incumbent.

^[12] Budgets are made up of large numbers of line items, each of which may represent only a small amount. If public bodies were held to the test that Mr. Bradley suggests, it could significantly limit their ability to effect savings and reallocate funds by making a number of small changes. It is unlikely that the Minnesota Supreme Court intended Caffrey to produce such a result.

^[13] An example cited by Mr. Donahue was the conflict that could occur between a school building and the central office when curricular changes decided upon by a site council required "moving walls" or making other modifications of physical facilities.

^[14] Kent Stever, a high school principal, testified as a witness for Mr. Bradley on the issue of site-based management. Mr. Stever's testimony did not necessarily contradict evidence that buildings had acquired greater authority and control over many kinds of support service decisions since the positions of Director of Business/Finance, Executive Director of Human Resources, and Director of Support Operations were abolished. One of Mr. Stever's main premises was that site-based management of support service decisions was not necessarily a good idea, since individual sites may not always have the vision, planning skills, and experience to make the best decisions. Whether site-based management of support services is a good idea is not a proposition which affects Mr. Bradley personally, as opposed to affecting his position, but rather is a policy choice that the School Board clearly has discretion to make.

^[15] Mr. Bradley also seems to argue that the District acted in bad faith in demoting him because throughout his tenure as a department head, he had been both a practitioner and proponent of site-based management. But the evidence established that the School Board did not consider Mr. Bradley to be a barrier to increased site-based management of support services but rather that the barrier was the way in which decision making power over those services was concentrated in his former position.

^[16] As further evidence of Mr. Fujitake's personal animosity. Mr. Bradley cites his testimony and that of Ms. Holland that Mr. Fujitake only met with Mr. Bradley only about five times during the time Mr. Bradley served as Mr. Fujitake's subordinate. But that evidence could support any number of inferences, many of which are not suggestive of personal animosity.

^[17] As noted above, the original recommendation to eliminate Mr. Bradley's department head position and two others and to replace them with a single department head provision was made by an independent consultant on April 26, 1995, well before Mr. Fujitake was employed in any capacity by the District. (Exhibit Q)